
(1972) 09 AP CK 0015
In the Andhra Pradesh High Court

State of Hyderabad

APPELLANT

Vs

K. Venkateswara Rao

RESPONDENT

Date of Decision : 01-09-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 173
Prevention of Corruption Act, 1988 — Section 10, 13, 5

Citation : (1973) CriLJ 1351

Hon'ble Judges : Venkatrama Sastry, J

Bench : Single Bench

Judgement

Venkatrama Sastry, J.—This is an application by the State filed u/s 561-A Cri. P- C. for stay of all further proceedings in O. P. 63 of 1971 on the file of the District Judge's Court. Guntur, pending disposal of C. C- No. 6 of 1971 on the file of the Court of the Special Judge for S. P- E. and A. C- B. cases, Hyderabad.

2. In the affidavit filed in support of this application, it has been stated that the respondent herein was originally appointed as Assistant Inspector of Central Excise on 17-2-1944 and by April, 1968 he was working as Asst. Collector of Central Excise, that the total income of the respondent from his known sources of income during the period from 17-2-1944 to 8-4-1968 when his residence at Rajahmun-dry was searched is Rs. 2,86.619 that after deducting maintenance expenditure during this period for his family etc. the respondent was having assets of the value of Rs. 2.03.615/- that the assets of the respondents were thus disproportionate to his known sources of income to the extent of Rs. 1,11,555/- and the respondent could not satisfactorily explain for the said assets, that therefore a charee-sheet was filed before the Special Judge, for S.P. E. and A. C. B. Cases at Hyderabad for an offence u/s 5(2) read with Section 5(1) (e) of the Prevention of Corruption Act and the same is pending in C.C. 6 of 1971, that the prosecution cited as manv as 107 witnesses and filed as many as 574 documents to prove the charge of disproportionate assets against the respondent, that after filing of the charge-sheet the State at the instance of C. B.

I- invoking the provisions of Criminal Law Amendment Ordinance 1944 (Ordinance 38 of 1944) filed an application for attachment of the properties of the respondent, consisting 81 items of moveable and immovable properties in O. P. 63 of 1971 on the file of District Judge's Court. Guntur that the learned District Judge was pleased to pass an order of ad interim attachment, under S- 4 of the said Ordinance on 30-6-1971 and issued notice to the respondent and other concerned parties, that the O. P. was posted for enquiry to 1-4-1972 that the witnesses to be examined and the documents, on which the prosecution relies in proof of charge of disproportionate assets in C.C. 6 of 1971 and in the O. P. are the same that therefore the evidence will have to be let in twice over if the inquiry in O. P. is allowed to carry on. that the inquiry in the Criminal case cannot speedily be concluded if the O. P. is allowed to carry on before the disposal of the Criminal case, since the documents to be marked and the witnesses to be examined are all common, that if the Criminal case against the respondent is disposed of there may not be any need for enquiry in the O. P. in view of the provisions contained in Section 13 of the said Ordinance that any enquiry in O. P. will result in unnecessary hardship to the parties and waste of public money and time and that therefore the further proceedings in O. P. 62 of 1971 on the file of the District Court Guntur, may be stayed pending disposal of C.C. 6/71-

3. On this application filed on 29-3-1972 my learned brother Lakshmaiah. J. granted interim stay on 30-3-1972. The respondent herein filed Criminal Miscellaneous Petition No- 1588 of 1972 to vacate the interim stay granted on 30-3-1972. In the affidavit filed in support of this application, it has been stated that the material allegations made in the charge-sheet are not correct and they do not represent the true state of affairs, that after the receipt of the notice u/s 4 he appeared in the court and filed his counter in August, 1971 and asked for vacating the interim order and dismiss the O. P. that the District Judge, proceeded to investigate the respective merits in the case and the O. P. was posted to 1-4-1972 for investigation that finding that the allegations made in the O. P. do not bear out the investigation by the District Judge, the petitioner filed the present petition, that the petition is not maintainable either on law or on facts that having obtained ex parte order of ad interim attachment, from the District Judge, the petitioner cannot invoke the jurisdiction of this court u/s 561-A Criminal P. C. To preclude the respondent from exercising his right of showing cause and satisfying the District Judge that the properties in question were not procured by means of any of fence and that they are not disproportionate to the known sources of income that the course adopted by the petitioner is in manifest abuse of the process of the court and is in utter disregard of the principles of natural justice, that the charge sheet was filed on 10-2-1971 that he appeared on 11-3-1971 and the case is still in the stage of Section 173(4) Criminal P. C. that the prosecution has not Produced the original documents, but is proceeding in a leisurely fashion mainly for the purpose of harassing the respondent that the contention of the petitioner that the witnesses are to be examined and the-

documents to be filed twice over is untenable, that if the petitioner seeks relief under the said Ordinance, the relief must stand the scrutiny required under that ordinance that if the stay asked for is granted it amounts to making the stay absolute under the said ordinance by shutting out the procedure open to the respondent for getting the ad interim attachment vacated, that he has got good grounds for vacating the interim order and if he is precluded from showing cause against the ad interim order, he will be put to serious and irreparable loss and harassment.

4. In a reply affidavit filed to this application it has been stated that u/s 10(2) of the Ordinance the attachment has to be continued and there is no question of vacating the ad interim attachment at all, since a charge sheet has been filed and the case has been taken on file in C.C. 6 of 1971 that this court got power to stay the proceedings now pending before the District Judge, as the matter arises under the Criminal Law Amendment Ordinance, that the contention of the respondent that the petition for stay is not maintainable is without substance, that the interests of justice in this case require that the proceedings in O. P. 63 of 1971 have to be stayed and there is no abuse of the process of the court. In reply to the other allegations in the counter affidavit, it is stated that the copies of the documents and other papers have been supplied as required u/s 173(4) Criminal P. C. and the case is posted for framing of charges by the Special Judge and the respondent alone has been taking time for perusing the original documents. The complaint that the prosecution has been leisurely carrying on the proceedings is denied. On the other hand it is stated that the prosecution is anxious to complete the case as expeditiously as possible. Since the issue under both the O. P. and the C C. is the same, the case pending in the Criminal court has to be given precedence over the civil case and the circumstances of the case warrant stay of the further proceedings. It is also stated that the further inquiry contemplated under Sections 4 (2) and 5 of the Ordinance is only a formality in view of Sections 10 (2) and 13 of the Ordinance.

5. The learned standing counsel for S.P. E. and A. C. B, cases urged in support of its contention that Section 561-A applies to this case, that the District Court is criminal Court exercising criminal powers under this Ordinance, that this is another forum created by the Ordinance, which is subordinate to the High Court. that it is not a civil Court and that Section 561-A therefore is applicable. He also cited a decision in M. S. Sheriff v. State of Madras AIR 1934 SC 397 : (1954 Cri LJ 1019) and contended that the civil Proceedings have to be stayed pending criminal proceedings. He also relied upon another decision in Kanhaiya Lal Vs. Bhagwan Das, and contended that a stay can be granted u/s 561-A Cri P. C- He further urged that the trial before the-Special Judge, is likely to be finished in about six months and there is no short-circuiting the procedure prescribed under the Ordinance,

6. Dr. Bhimaraju, learned Counsel" appearing for the respondent mainly raised two points, firstly that the powers u/s 561-A cannot be invoked" for granting a

stay in this case, as the-District Court is not a Criminal Court, subject to the jurisdiction of this Court and secondly that the granting of stay would amount to short circuiting the procedure prescribed under the Ordinance in regard to the investigation of the objection, which he is entitled to file before the-District Judge and get the necessary reliefs thereon. In support of his contention, the learned Counsel for the respondent relied upon a decision of my learned brother Chinnaoua Reddy J. in M. D- S. Ansari v Disciplinary Tribunal 1971 Mad LJ (Cri) 5 : (1971 Cri LJ 866 (Andh Pra)). In that case an application was made for the stay of trial of proceedings before the Tribunal constituted under the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act. 1960 pending trial of the case before the Special Judge. constituted for the trial of the case arising under Prevention of Corruption Act. It is held by Chinnappa Reddy J. that the-Chairman of the Disciplinary Proceedings Tribunal is not a criminal Court constituted under the Code and the High Court has no power to stay the proceedings before such tribunal- The learned" Judge examined the scope of the Act. 1960" and the Code of Criminal Procedure and observed as follows:

The Code of Criminal Procedure is-concerned with regulating the procedure-to be followed in Criminal Courts including the High Court and the power u/s 561-A is to be exercised only in relation to proceedings in such courts. Wide, though the Powers of the High Court u/s 561-A of the Cri P. C. are, they do not enable the High Court to -stretch its arm and reach proceedings which are pending before courts and Tribunals whose procedure is not regulated by the Code of Criminal Procedure.

The learned judge met the argument of the learned Counsel by holding that the Chairman of the Disciplinary Proceedings Tribunal may be amenable to the jurisdiction of the High Court under Articles 226 and 227 of the Constitution, but it -does not make him an inferior or a subordinate Criminal Court. Therefore the basis of this decision is that the Court or Tribunal whose proceedings are sought to be stayed, is not one inferior or subordinate Criminal Court subject to the - jurisdiction of the High Court, within Section 561-A Criminal P. C.

7. The learned Counsel also relied upon another decision of the same Judge, in Devaiah In re, 1969 Mad LJ (Cri) 537 : (1969) Cri LJ 1477 (Andh Pra) where dealing with the scope of Section 561-A Criminal P. C. it was held that the executive orders of the executive authorities cannot be interfered with. Sri Bhima Raiu also relied upon a decision of the Supreme Court dealing with the scope of Section 561-A in Hazari Lal Gupta Vs. Rameshwar Prasad and Another, etc., {Andh Pra) wherein it has been held that the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily enquire as to whether the evidence is reliable or not-It was also stated in that decision that where investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code, the High Court does not interfere with such investigation, because it would then be impeding

investigation and exercise of jurisdiction of statutory authorities in accordance with the provisions of the Criminal Procedure Code. He also relied upon the decision of my learned brother Lakshmaiah J. in *S. A. Rahim v- B. Chenchiah* 1971 Mad LJ (Cri.) 281. which is to the effect that the powers u/s 561-A can be invoked only in extraordinary cases and with respect to matters not specifically provided for by the Code and they cannot be exercised for the purpose of the short circuiting the case-

8. In this connection we have to see whether the District Court, in exercising the powers under the Ordinance is a criminal court or not. The Ordinance, as it is named, indicates amendment of Criminal Law, in relation to the scheduled offences. In this ordinance, scheduled offence means an offence specified in the schedule to the Ordinance, The schedule to the Ordinance also includes, under clause 4-A an offence punishable u/s 5 of Prevention of Corruption Act 1947 (Act II of 1947). Therefore there can be no dispute that any prosecution for an offence u/s 5 of the Prevention of Corruption Act comes within the Purview of this Ordinance.

9. Section 3 of the Ordinance says that where the State Government has reason to believe that any person has committed any scheduled offence, the State Government may whether or not any court has taken cognizance of the offence, authorize the making of an application to the District Judge. within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment under this Ordinance of the money or other property which the State Government believes the said person to have procured by means of the offence, etc. The provisions of Order 27 C P- C. in suits by or against the Government or public officers in their official capacity have been made applicable to the proceedings for an order of attachment under this Ordinance. Section 4 of the Ordinance says that on receipt of an application u/s 3. the District Judge shall pass without delay an ad interim order attaching the money or other Property, unless for reasons to be recorded in writing he is of the opinion that there exists no prima facie grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property. Therefore unless, the District Judge, sees reason to contrary he is bound to pass an ad interim attachment. Sub-section (2) of Section 4 directs that notice should be issued to the person, whose money or other property is being attached, and notice to show cause why the order of attachment should not be made absolute. Sub-section (3) provides for notice to all persons as having or being likely to claim any interest or title in the property of the person to whom notice is issued, calling upon them also to make objections, if he or they desire to the attachment of the property or any Portion thereof on the ground that he had an interest in such property or Portion thereof. Section 5 of the Ordinance provides for investigation of objections to attachment. Sub-sec- (1) of Section 5, provides that if no cause is shown and no objections are made u/s 4 on or before the specified date, the District Judge shall forthwith pass an order making an ad

interim order of attachment absolute. Sub-section (2) of Section 5 provides that if cause is shown or objections are made as aforesaid, the District Judge shall proceed to investigate the same. In so doing the District Judge shall follow the procedure and exercise all the powers of a court in hearing a suit under the Code of Civil Procedure, as regards examination of the parties and in all other respects- Sub-section (3) provides that after investigation the District Judge shall pass an order either making the ad interim order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order. Section 7 of the Ordinance provides for execution of orders of attachment under this Ordinance in a manner so far as may be practicable as provided in the CPC for the attachment of property in execution of a decree- Section 8 of the Ordinance provides that the District Judge may accept security and refrain from passing an order of attachment. Section 9 of the Ordinance provides for the administration of the attached Property and the passing of incidental orders for the payment of maintenance to the applicant and his family and for the expenses connected with the defence of the applicant, where criminal proceedings have been instituted against him in any court for a scheduled offence and also for safeguarding the interests of the business affected by the attachment. Sub-section (21) of Section 9 also provides that the District Judge has also got powers to appoint receiver to manage the property attached under this ordinance and to such receiver the provisions of Rules 2 to 5 of Order 40 C. P. C. have been made applicable.

10. Section 10 of the Ordinance provides for the duration of the attachment. The attachment continues for three months, where no court has taken cognizance of the alleged scheduled offence when the order is applied for and where a court has taken cognizance of the scheduled offence whether before or after until orders are passed by the District Judge, in accordance with the provisions of the Ordinance after the termination of the criminal Proceedings. Section 11 provides for an appeal to the High Court by either the State Government or any person, who has shown cause u/s 4 or 6 or who has made an objection u/s 4. or an application under Sections 8 and 9 in regard to the property attached under this Ordinance. Section 12 of the Ordinance provides that the Criminal Court which tries the scheduled offence is bound to evaluate at money value the property attached etc. Section 13 provides for the disposal of the property upon the termination of the criminal proceedings.

11. A review of the above provisions shows that the District Judge, in passing an order of ad interim attachment u/s 4 of the Ordinance is not acting as a civil Court. He is not exercising his powers of attachment provided under C P. C.

12. This is a special enactment conferring power upon the District Judge, to Pass an order of ad interim attachment under this Ordinance, as provided u/s 3. It is therefore a special Power conferred upon the District Judge under this Ordinance, which deals with the scheduled offences, which are criminal in nature and about which the cognizance of the offence has been taken in a criminal Court

constituted, under the Criminal law Amendment Act, 1952- The other aspect viz., in investigating the objections to the attachment the powers under the C. P. C. are specially conferred upon the District Judge itself shows a fortiori that these powers were not there in the criminal Court. The District Judge acting as a Criminal Court in attaching the property under this Ordinance, had the special power conferred upon him. If the District Judge was an ordinary Civil Court in effecting this attachment, there was absolutely no necessity to confer these powers u/s 3 (2) of the Ordinance. He would have had those powers by himself without any special conferment. Hence these provisions, in my opinion, have been specially conferred in this connection because he was acting as a criminal Court and this enquire, which is to be conducted, is in accordance with the procedure laid down in the C P. C. Moreover the fact that even in regard to the execution of the orders for attachment, the C. P. C. has been made applicable u/s 7 of the Ordinance that but for this provision, there would have been no scope for the execution, otherwise. Even in regard to the appointment of receiver for the attached property, it is pertinent to note that the Ordinance makes applicable only rules 2 to 5 of Order 40 of C P. C. and not Rule 1 of Order 40 which confers powers upon the Civil Court the power for appointment of receiver. The fact that the duration of attachment is made depending upon the result of the criminal proceedings in the court, which has taken cognizance of the alleged scheduled offence, also shows that a different method has been adopted in regard to the attachment than the one provided in the C. P. C. The powers of appeal to the High Court conferred u/s 11. within 30 days from the date on which the aggrieved order was passed also shows that it is a special power of appeal given against the orders under this Ordinance and is not the one which was usually given in the C- P. C.

13. Considering these various aspects, I think there can be no doubt or dispute that the Court exercising the powers of attachment under this Ordinance is only a criminal Court and is a Court subordinate to the High Court under the Criminal Procedure Code. It is no doubt a new Court or new forum provided by this Ordinance- As there is no other provision in the Criminal Procedure Code, for securing such orders of attachment as are provided under this Ordinance. I am therefore, of the opinion that the District Court in this case is criminal Court, subordinate to the High Court and that Section 561-A of the Criminal Procedure Code is therefore attracted to this case.

14. Regarding the scope of Section 561-A I may respectfully cite the decisions of the Supreme Court in Dr. Raghubir Sharan Vs. The State of Bihar, and The State of Uttar Pradesh Vs. Mohammad Naim, . In The State of Uttar Pradesh Vs. Mohammad Naim, their Lordships of the Supreme Court have held as follows:

It is now well settled that the Section confers no new powers on the High Court. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice. The Section provides that those powers which the Court inherently possess shall be

preserved lest it be considered that the only powers Possessed by the Court are those expressly conferred by the Code and that no inherent powers had survived the Passing of the Code.

Much to the same effect are the observations of their Lordships of the Supreme Court in *Dr. Raghubir Sharan Vs. The State of Bihar*, . It has been held by their Lordships as follows:

Every High Court as the highest Court exercising criminal -jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice. This power extends to expunction or ordering expunction of irrelevant remarks made against a person who is neither a party nor a witness to the Proceeding, from a judgment or order of a subordinate Court, although the matter has not been brought before it in regular appeal or revision, and would be exercised by it in appropriate cases for securing the ends of justice. Being an extraordinary power it will however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers such as by passing comment upon a matter not relevant to the controversy before it and which is unwarranted or is likely to harm or prejudice another.

In view of the above authorities, I am of the opinion that this Court has got power to pass an order or stay to secure) ends of justice-

15. I, therefore, think that the decision of my learned brother Chinnappa Reddy, J. relied upon by the learned Counsel for the respondent has no application to the facts of this case and is distinguishable. I respectfully follow the decision of Sulaiman J. in *Kanhaiya Lal Vs. Bhagwan Das*, wherein his Lordship has held that the stay can be ordered u/s 561-A Criminal Procedure Code.

16. Adverting to the next submission made by the learned Counsel for the respondent, I do not think that there is any short-circuiting of the procedure prescribed u/s 4 (2) of the Ordinance in this case. It is no doubt true that the respondent can show cause why the ad interim attachment order should not be made absolute. But that does not mean that he is entitled to ask the court to go into the question that he has not committed the scheduled offence or that he has not procured the main or other property by illegal means. That is the matter which has to be investigated in the court of Special Judge, which has already taken cognizance of the offence u/s 5(2) read with 5(1)(e) of the Prevention of Corruption Act, which is now pending as C C- 6 of 1971. When a special court has been constituted and power has been conferred upon that Court under Criminal Law Amendment Act. 1952 and Prevention of Corruption Act, 1947, to go into this question, the same enquiry cannot be conducted by the District Court, in an objection to the ad interim attachment. The objections if any, in my opinion, are only confined to the provisions made in Sections 8 and 9 of the Ordinance i. e. either accepting security in view of the attachment or making incidental orders in the course of administration of the attached property. It is not the intention of the legislature according to me. that the truth or otherwise of

the entire offence has to be investigated in an inquiry u/s 5 of this Ordinance. The respondent is not therefore in any way Prejudiced by the stay of the proceedings pending inquiry in the criminal Court in C.C. 6 of 1971. There is no principle of natural justice that is offended in this case. It is certainly open to him to approach the District Court for incidental orders u/s 9 of the Ordinance which would protect or safeguard his interest pending enquiry into the Criminal case-

17. In these circumstances, I direct the stay of the proceedings in O. P. No. 63 of 1971 on the file of the District Judge's Court, Guntur, pending disposal of C. C- 6 of 1971 on the file of the Court of Special Judge for S.P. E. and A. C B. cases Hyderabad.